IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.714 OF 2005

Suresh Balgonda Patil. ... Petititioner
Versus.
M/s.A.Prakash & Co. & ors. ... Respondents.

Shri M.D.Angal for the Petitioner.

Shri S.S.Patwardhan for the Respondents No.1.

Ms.M.M.Deshmukh, A.P.P. for State.

CORAM : ABHAY S. OKA, J.

DATED : 22nd June, 2005.

P.C.:

1. Rule. The Respondent No.1 waives service. The learned A.P.P. also waives service for the Respondent No.2. Considering the facts and circumstances of the case the petition is taken up for final hearing.

2. This petition arises out of an order passed by the learned Judicial Magistrate First Class, Sangli, in a complaint under section 138 of the Negotiable Instruments Act. The Petitioner is the accused and the Respondent No.1 is the complainant. An application was made by the Petitioner at Exh.131 praying that the document at Exh.57 to 59, 66 and 80 be forwarded to the handwriting expert for obtaining his opinion as regards the hand writing and signature thereon. By the impugned order dated 5th February 2005 the said application was rejected.

3. The learned Counsel appearing for the Petitioner submitted that the Petitioner has been all along disputing the genuineness of the documents in dispute and the Application was filed on the same day on which one of the defence witnesses was examined. He submitted that the rejection of the said Application amounts to denial of opportunity to the Petitioner/ Accused to lead evidence in the matter.

4. Shri Patwardhan learned Counsel appearing the Respondent No.1 pointed out that the Application is belated and the same is made with an object of delaying the trial. He submitted that the Application should have been made immediately after the documents in question were admitted in evidence. He submitted that the learned Judge was right when he rejected the Application.

5. I have considered the rival submissions. Notes of evidence are placed on record by the learned Counsel appearing for the Petitioner. From the evidence on record I find that a specific stand is taken by the Petitioner as regards the disputed documents while cross-examining the prosecution witnesses. In fact a question was attempted to be asked in the cross-examination of the P.W.1 i.e. the Complainant whether he had any objection to send signature embodied

in Exh.57 to handwriting expert. The learned Judge did not permit the learned Advocate for the Petitioner to ask the said question on the ground that the consent of the deponent was immaterial. Moreover in the cross-examination of the complainant there is a specific challenge to the said document. Even in the statement of the Petitioner under section 313 of the Code of Criminal Procedure, 1973, the Petitioner disputed his signature on the documents and requested for examination of those documents by an expert. The last defence witness was examined by the Petitioner on 1st December 2004 and on the same day the Application at Exh.131 was preferred by the Petitioner.

6. The learned trial Judge has observed while rejecting the Application that there was ample opportunity available earlier for the Petitioner to make the Application. The learned Judge observed that in the matter of the year 1995 such an opportunity cannot be granted.

7. In my view the approach of the learned trial Judge was erroneous. Even in the statement under section 313 of the Code, the Petitioner disputed the signature appearing on the documents. The Petitioner right from inception had shown his willingness to have the documents examined by an handwriting expert. The Application Exh.131 was filed on 1st December 2004 when

the third defence witness was examined. Thus, in my view, in the facts of this case, the rejection of the said application amounts to denying an opportunity to defend to the Petitioner. Hence the order impugned is required to be interfered with.

8. In view this position, the following order is passed:

(i) The impugned Judgment and order dated 5th February 2005 passed below Application Exh.131 is quashed and set aside and the Application Exh.131 is allowed. The learned Chief Judicial Magistrate will pass order for referring the documents at Exhs.57, 58, 59, 66 and 80 along with admitted signatures of the Petitioner which are on record, to the Government handwriting expert or to a private handwriting expert after hearing the parties and will pass consequential directions regarding payment of charges etc. The learned Magistrate will ensure that the process is expedited in view of the fact that the case is of the year 1995.

(ii) Rule is partly made absolute in the above terms.

(iii) Parties and the concerned Court to act on an authenticated copy of this order.

Judge.